

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Implementation of the |) | CC Docket No. 96-115 |
| Telecommunications Act of 1996 |) | DA 98-836 |
| |) | |
| Telecommunications Carrier's Use |) | |
| of Customer Proprietary Network |) | |
| Information and Other |) | |
| Customer Information |) | |

**COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS IN SUPPORT
OF CTIA'S REQUEST FOR DEFERRAL AND CLARIFICATION**

Sprint PCS supports the request of the Cellular Telecommunications Industry Association ("CTIA") that the FCC defer for 180 days the effective date of Sections 64.2005(b)(1) and (b)(3) of the new rules governing the use of customer proprietary network information ("CPNI"), and for clarification of those rules, insofar as they apply to the provision of commercial mobile radio services ("CMRS"). As described below, the FCC's recently adopted CPNI rules impose landline-related regulatory distinctions and restrictions upon CMRS providers. Ultimately, these restrictions harm consumer interests, are not required by Section 222 of the Communications Act, as amended, and make no sense in the robustly competitive CMRS marketplace.

Accordingly, the FCC should defer the effective date of its new Sections 64.2005(b)(1) and (b)(3) develop a record to clarify that landline-related regulatory distinctions and CPNI restrictions -- especially those contained in Section 64.2005(b)(1) concerning the distinctions among, and restrictions on the use of CPNI to market

“information services,” “CPE,” and “basic” services (including “adjunct to basic services”) -- should not apply to CMRS providers. The FCC should also clarify the definition of CPNI and the scope of the win-back rule as they may apply to CMRS, as requested by CTIA.

The FCC established CPNI requirements -- prior to the 1996 Telecommunications Act -- applicable to the enhanced services operations of AT&T, the BOCs, and GTE, as well as the CPE operations of AT&T and the BOCs, in the *Computer II*, *Computer III*, *GTE*, *ONA*, and *BOC CPE Relief* Proceedings.¹ As the *Second Report and Order* notes, the FCC’s former CPNI rules were intended to prohibit AT&T, the BOCs, and GTE from using CPNI obtained from their provision of regulated services to gain a competitive advantage in the unregulated CPE and enhanced services markets.²

Notwithstanding the FCC’s refusal to interpret Section 222(c)(1) based on its prior orders,³ it is clear from these earlier proceedings that the FCC has recognized that the imposition of CPNI rules may affect customer awareness of competitive services, such as enhanced services and CPE, as well as customer awareness of the providers of those services and the terms of their service offerings. The FCC had properly concluded that allowing communications carriers access to CPNI to market enhanced service and CPE may best serve competition and the interests of consumers. The

¹ See *Second Report and Order and Further Notice of Proposed Rulemaking*, In re Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, FCC 98-27 (February 26, 1998).

² Notably, the FCC refused to interpret Section 222(c)(1) based on its prior orders in the *Computer II*, *Computer III*, *GTE*, *ONA*, and *BOC CPE Relief* Proceedings. See, e.g., *Second Report and Order* at Paragraph 34.

³ See *Computer II*, *Computer III*, *GTE*, *ONA* and *BOC CPE Relief* proceedings.

Commission's earlier CPNI-related proceedings also illustrate that the FCC reevaluated and reapplied CPNI requirements as warranted by new information about market conditions and technology. The Commission erred by not adopting this approach in its *Second Report and Order*. This mistake can be rectified, however, by interpreting and applying CPNI regulations for CMRS in the context of the CMRS market and available technologies. Landline CPNI rules should not be applied to CMRS.

Sprint PCS agrees with CTIA's characterization of the CMRS market and of CMRS technologies. CTIA has described the CMRS market and technologies well and properly emphasizes the following:



- The FCC has found that there are significant public interest benefits associated with the bundling of cellular CPE and services.
- The FCC has found that bundling is an efficient promotional device which reduces barriers to new customers and which can provide new customers with CPE and cellular service more economically than if it were prohibited.
- The CMRS industry is marked by an increasing number of competitors and customer switching.
- The terms "CPE," "enhanced services," "basic services," and "adjunct to basic services" have had no significance for mobile services.
- Wireless equipment and a wide variety of wireless offerings have always been a part of the CMRS-customer "existing service relationship."
- Product integration is central to the mobile services industry, but the FCC's new CPNI rules force wireless carriers to segregate their marketing of equipment and wide array of features and services.
- Wireless equipment and transmission service are technically inseparable
- Customers expect they will be offered service and equipment together.
- Mobile technologies integrate a variety of related services which have always been purchased with the underlying service.

- CMRS carriers compete by offering state-of-the art bundled technologies and service.

These points demonstrate that CPNI restrictions based on a landline model are ill-suited to the CMRS marketplace. Sprint PCS respectfully submits that the Commission's CPNI rules should take into account CMRS market conditions and available technologies to maximize competition and consumer interests. This means permitting CMRS providers access to CPNI to market enhanced services and CPE, as those terms are used in the *Second Report and Order*. Competition and consumer interests would be best served by permitting CMRS carriers to use CPNI to market enhanced services and CPE.

WHEREFORE, Sprint PCS requests that the FCC grant CTIA's request for deferral and clarification, for the reasons stated herein and in CTIA's request.

Respectfully submitted,

 by 
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